

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	No.: 16-cr-10305-NMG
	)	
MARTIN GOTTESFELD	)	

DEFENDANT’S SUPPLEMENTAL REQUEST FOR JURY INSTRUCTION  
CONCERNING CONSPIRACY

The defendant Martin Gottesfeld (“Mr. Gottesfeld”) moves this Honorable Court to instruct the jury at the final charge that, as to Count 1, the government must prove beyond a reasonable doubt that the alleged coconspirator was not a government agent. See Sears v. United States, 343 F.2d 139, 142 (5th Cir. 1965); United States v. Pennell, 737 F.2d 521, 536 (6th Cir. 1984); United States v. Lewis, 53 F.3d 29, 35 (4th Cir. 1995).

In the present case, the government adduced no evidence to the actual identity of the “persons” alleged to be members of the conspiracy. The only evidence to identity is to so-called “twitter handles” such as “@Digitaghost” and similar online monikers. Mr. Gottesfeld never met the alleged coconspirators; his entire known communication with them is through electronic means.

To the government’s argument made at today’s hearing, Mr. Gottesfeld testimony concerning coconspirators involvement in (unsuccessful) DDOS activity comes only from the self-report of the alleged coconspirators; Mr. Gottesfeld did not testify to an independent, corroborated knowledge of such DDOS activity by his alleged coconspirators.

In the present case, where the jury is left without any evidence as to the actual identity of the “persons” behind these online monikers, the jury must be instructed that the government

must prove beyond a reasonable doubt that the alleged coconspirator was not a government agent.

Respectfully submitted,  
MARTIN GOTTESFELD  
By his attorney:

/s/ David J. Grimaldi

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David J. Grimaldi  
David J. Grimaldi, P.C.  
BBO No. 669343  
675 Massachusetts Avenue, 9<sup>th</sup> Floor  
Cambridge, MA 02139  
617-661-1529 (tel)  
857-362-7889 (fax)  
[david@attorneygrimaldi.com](mailto:david@attorneygrimaldi.com)

DATE: July 30, 2018

CERTIFICATE OF SERVICE

I, David J. Grimaldi, hereby certify that true copies of this motion were served on all registered participants in this matter via ECF this 30th day of July 2018.

/s/ David J. Grimaldi

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David J. Grimaldi